

## **REMARKS**

This Application has been carefully reviewed in light of the Final Office Action mailed April 30, 2008. At the time of the Final Office Action, Claims 25-34 were pending in this Application and were rejected. Applicant respectfully requests reconsideration and favorable action in this case.

### **Affidavit under 37 CFR §1.131**

The Examiner continues to indicate that the affidavit filed under 37 CFR 1.131 on August 6, 2007, has been considered but remains ineffective to overcome the Mazzuca reference. Applicant submits herewith a supplemental affidavit under § 1.131 with supporting exhibits establishing conception and actual reduction to practice of the invention prior to the effective date of Mazzuca. Applicant submits that the supplemental § 1.131 Affidavit overcomes the existing rejections to Claims 25-34, which each rely in whole or in part upon Mazzuca.

Applicant requests reconsideration, withdrawal of the rejections to Claims 25-34 and full allowance thereof.

### **Rejections under 35 U.S.C. §102**

Claims 25, 26, 32 and 34 were rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0070915 by Mazzuca et al. ("Mazzuca"). Applicant respectfully traverses and submits the cited art does not teach all of the elements of the claimed embodiment of the invention.

Applicant submits herewith a supplemental affidavit under § 1.131 with supporting exhibits establishing conception and actual reduction to practice of the invention prior to the effective date of Mazzuca. Applicant specifically points to Exhibit F, dated October 8, 2002, detailing a successful test of a prototype device consistent with the design described by the present application and claims. The evidence presented in Exhibit F was recently located as part of the entire engineering notebook recording the work on the design described by the present application.

Applicant submits that evidence of this successful prototype device test and actual reduction to practice on or before October 8, 2002, in addition to the evidence previously

submitted, establishes conception and actual reduction to practice of the claimed invention prior to the effective filing date of the cited reference. Applicant submits that the supplemental § 1.131 Affidavit overcomes the existing rejections to Claims 25-34, which each rely in whole or in part upon Mazzuca.

Applicant requests reconsideration, withdrawal of the rejections to Claims 25-34 and full allowance thereof.

**Rejections under 35 U.S.C. §103**

Claims 27-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mazzuca.

Claim 33 was rejected under 35 U.S.C. §103(a) as being unpatentable over Mazzuca in view of U.S. Patent No. 4,915,688 issued to Bischof et al. ("Bischof"), and further in view of U.S. Patent No. 5,902,839 issued to Lautenschlager et al. ("Lautenschlager"). Applicant respectfully traverses and submits the cited art combinations, even if proper, which Applicant does not concede, does not render the claimed embodiment of the invention obvious.

Applicant submits herewith a supplemental affidavit under § 1.131 with supporting exhibits establishing conception and actual reduction to practice of the invention prior to the effective date of Mazzuca. Applicant specifically points to Exhibit F, dated October 8, 2002, detailing a successful test of a prototype device consistent with the design described by the present application and claims. The evidence presented in Exhibit F was recently located as part of the entire engineering notebook recording the work on the design described by the present application.

Applicant submits that evidence of this successful prototype device test and actual reduction to practice on or before October 8, 2002, in addition to the evidence previously submitted, establishes conception and actual reduction to practice of the claimed invention prior to the effective filing date of the cited reference. Applicant submits that the supplemental § 1.131 Affidavit overcomes the existing rejections to Claims 25-34, which each rely in whole or in part upon Mazzuca.

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**Request for Continued Examination (RCE)**

Applicant encloses a Request for Continued Examination (RCE) Transmittal, and hereby authorized the Commissioner to charge \$810 to Deposit Account No. 50-0359 of ArthroCare Corporation.

**Information Disclosure Statement**

Applicants enclose an Information Disclosure Statement and PTO Form 1449, with copies of the references for the Examiner's review and consideration.

### CONCLUSION

Applicant has made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicant respectfully requests reconsideration of the pending claims.

The Commissioner is hereby authorized to charge \$1110 for the Three-Month Extension of Time and \$810 for the RCE to Deposit Account No. 50-0359 of ArthroCare Corporation. Applicant believes there are no additional fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-0359 of ArthroCare Corporation in order to effectuate this filing.

Applicant believes there are no further fees due at this time, however, the Commissioner is hereby authorized to charge any additional fees necessary or credit any overpayment to Deposit Account No. 50-0359 of ArthroCare Corporation in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.358.5925.

Respectfully submitted  
Attorney for Applicant,



Matthew Scheele  
Reg. No. 59,847

Date: 10/24/08

CORRESPONDENCE ADDRESS:

ARTHROCare CORPORATION

CUSTOMER NO. **21394**

512.358.5925

512.391.3901 (fax)

- Enclosures: 1) Declaration Pursuant to 37 CFR § 1.131.  
2) Information Disclosure Statement and PTO Form 1449.